STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,

Regarding a Complaint and Petition By Commonwealth Edison Company For An Order Finding PDV Midwest LLC In Violation Of The Prohibition On Resale Of Retail Electric Service Contained In the Illinois Public Utilities Act And Set Forth In Rider 12, Conditions Of Resale Or Redistribution Of Electricity By The Customer To Third Persons, And For Other Relief. No. 02-0277

RESPONSES AND OBJECTIONS OF PDV MIDWEST REFINING, LLC AND CITGO PETROLEUM CORP. TO COMMONWEALTH EDISON COMPANY'S FIRST SET OF DATA REQUESTS

PDV Midwest Refining, LLC ("PDV Midwest) and CITGO Petroleum Corporation ("CITGO") (collectively, "Respondents"), by and through their attorneys, hereby submit the following Responses and Objections to the First Set of Data Requests (the "Data Requests") by Commonwealth Edison Company ("ComEd").

GENERAL OBJECTIONS

These General Objections (hereinafter "General Objections") are made in response to, and incorporated as part of, each specific response below. All responses are made subject to and without waiving the General Objections. To the extent that a particular General Objection is referenced in a specific response, such a reference is not to be construed as a waiver of any other General Objection applicable to information falling within the scope of the request.

- 1. Respondents object to these Data Requests to the extent they seek information that is neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.
- 2. Respondents object to these Data Requests to the extent they seek information that is not in Respondents' possession or control, is already in ComEd's control or possession, or is obtainable with equal or greater facility by ComEd.
- 3. Respondents object to these Data Requests to the extent they seek information or documents that are attorney work product, protected by attorney-client privilege, or otherwise exceeding the scope of permissible discovery. Inadvertent disclosure of any such information or documents shall not constitute a waiver of any privilege, and shall not waive the right of respondents to object to the use of any such information or document during this action.
- 4. Respondents object to these Data Requests to the extent that they attempt to impose obligations beyond those contained in the Rules of Practice of the Illinois Commerce Commission or the Illinois Supreme Court Rules.
- 5. By providing a response to any of these Data Requests, Respondents do not concede that the information provided is discoverable, relevant, or admissible, and reserve the right to challenge further discovery into the subject matter of the Data Requests.

 Respondents also reserve the right to challenge the relevance and/or admissibility into evidence of any information provided in response to these requests.
- 6. Respondents state that their investigation into the allegations of this matter is ongoing, and Respondents reserve the right, but undertake no obligation beyond that required by applicable law, to supplement these responses as additional information comes to light.

RESPONSES

- 1.01 Produce each and every document that discusses or refers or that relates to the Rate CS Contract, including, but not limited to:
 - a) each and every document that discusses or refers or that relates to electric service provided in connection with the Rate CS Contract;
 - b) each and every document that discusses or refers or that relates to negotiations relating to the Rate CS Contract;
 - c) any and all communications (including e-mail communications) or items of correspondence that discuss or refer or that relate to the Rate CS Contract;
 - d) each and every document that discusses or refers or that relates to resale of electricity provided pursuant to the Rate CS Contract; and
 - e) each and every document that discusses or refers or that relates to the "allocation" of costs of electricity provided under the Rate CS Contract among the Respondents.

Response:

Respondents object to this Data Request as overly broad and unduly burdensome, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Respondents object to this Data Request based on its use of the term, "resale," which is vague and ambiguous and calls for a legal conclusion. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents refer ComEd to the civil action identified as Needle Coker Co. v. Citgo Petroleum Corp., Case No. 00 L 014496, pending in the Circuit Court of Cook County, Illinois, County Department, Law Division. Respondents further state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.01 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order.

- 1.02 Produce each and every document that discusses or refers or that relates to electric service provided to the Lemont Facility, including, but not limited to:
 - a) each and every document that discusses or refers or that relates to amounts paid for electric service provided to the Lemont Facility;
 - b) any and all communications (including e-mail communications) or items of correspondence that discuss or refer or that relate to electric service provided to the Lemont Facility;
 - c) each and every document that discusses or refers or that relates to the metering of electricity supplied to the Lemont Facility, including, but not limited to, diagrams showing the configuration of metering equipment at the Lemont Facility; and
 - d) copies of all notes, summaries, minutes, reports, records, tape recordings (both audio and video) and transcriptions, including e-mails, of any meetings or conferences between or among the Respondents or any of them concerning electric service to the Lemont Facility.

Respondents object to this Data Request as overly broad and unduly burdensome, as unreasonably cumulative or duplicative, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents refer ComEd to their response to Data Request No. 1.01. Respondents further state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.02 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order.

- 1.03 Did PDV Midwest or CITGO resell electricity provided under the Rate CS Contract? If so:
 - a) produce each and every document that discusses or refers or that relates to the resale, including, but not limited to any bills or invoices relating to the resale and any all communications (including e-mail communications) or correspondence that discuss or refers or that relates to the resale;
 - b) identify each an every individual with knowledge concerning the resale and, for each individual identified, state the basis for and describe the state of his or her knowledge;
 - c) state when each and every resale of electricity provided under the Rate CS Contract occurred;
 - d) identify the purchaser of the electricity on each and every instance when electricity was resold;
 - e) state the amount of electricity that was resold on each instance when a resale occurred; and
 - f) state the amount paid for electricity on each and every occasion when a resale occurred.

Respondents object to this Data Request based on its use of the terms, "resale," "resell," and "resold," which are vague and ambiguous and call for a legal conclusion.

- 1.04 Did PDV Midwest or CITGO "allocate" the costs of electricity provided under the Rate CS Contract to other entities? If so:
 - a) produce each and every document that discusses or refers or that relates to the allocation of costs, including, but not limited to any bills or invoices relating to such allocation and any all communications (including e-mail communications) or correspondence that discuss or refers or that relates to the allocation;
 - b) identify each an every individual with knowledge concerning the allocation and, for each individual identified, state the basis for and describe the state of his or her knowledge;
 - c) state each and every instance when the costs of electricity provided under the Rate CS Contract were allocated;
 - d) for each and every instance when these costs were allocated, identify the entity or entities to whom the costs were allocated;
 - e) for each and every instance when these costs were allocated, identify the amount of costs that were allocated; and
 - f) for each and every instance when these costs were allocated, state the amount of electricity that was the subject of the allocation.

Respondents object to this Data Request as overly broad and unduly burdensome, as unreasonably cumulative or duplicative, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents identify the following: James Branch, James Cherwin, James Fillar, Derek Kruk, Rupa Natarajan, Nicholas Nedeau, Glenn Rabinak, and Gustavo Velasquez (persons with knowledge of allocation structure); Barbara Hogsett, Jackie Kannon, Ann Lowry, and Lois Summerlott (persons with knowledge of allocation billing); and Garry Naples (person with knowledge of allocation audit). Respondents further refer ComEd to their response to Data Request Nos. 1.01. Respondents state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.04 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order. Further responding, Respondents state that information responsive to this request may be derived or ascertained from documents already in ComEd's control or possession or obtainable with equal or greater facility by ComEd and/or from documents that will be produced to ComEd and the burden of deriving or ascertaining the information is substantially the same for ComEd for Respondents.

- 1.05 Produce each and every document that discusses or refers or that relates to the Litigation, including, but not limited to:
 - a) all pleadings filed in the Litigation;
 - b) any and all communications (including e-mail communications) or items of correspondence that discuss or refer or that relate to the Litigation including, but not limited to correspondence between the Respondents;
 - c) all documents produced by any party in connection with the Litigation;
 - d) all other documents that discuss or refer or that relate to discovery in the Litigation including, but not limited to, responses to any interrogatories propounded in the Litigation and the transcripts of any depositions taken in connection with the Litigation; and
 - e) all documents that discuss or refer or that relate to the settlement of the Litigation including, but not limited to documents that discuss or refer or that relate to negotiations concerning the settlement of the Litigation, including any draft settlement agreements.

Respondents object to this Data Request as overly broad and unduly burdensome, as unreasonably cumulative or duplicative, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents refer ComEd to their response to Data Request Nos. 1.01. Respondents further state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.05 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order.

- 1.06 Produce each and every document that discusses or refers or that relates to the August 2002 Agreement, including, but not limited to:
 - a) each and every document that discusses or refers or that relates to electric service provided in connection with the August 2002 Agreement;
 - b) each and every document that discusses or refers or that relates to negotiations relating to the August 2002 Agreement;
 - c) any and all communications (including e-mail communications) or item of correspondence that discuss or refers or that relates to the August 2002 Agreement;
 - d) each and every document that discusses or refers or that relates to resale of electricity provided pursuant to the August 2002 Agreement; and
 - e) each and every document that discusses or refers or that relates to the "allocation" of costs of electricity provided under the August 2002 Agreement among the Respondents.

Respondents object to this Data Request as overly broad and unduly burdensome, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Respondents object to this Data Request based on its use of the term, "resale," which is vague and ambiguous and calls for a legal conclusion. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.06 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order.

- 1.07 Did PDV Midwest or CITGO resell electricity provided under the August 2002 Agreement? If so:
 - a) produce each and every document that discusses or refers or that relates to the resale, including, but not limited to any bills or invoices relating to the resale and any all communications (including e-mail communications) or correspondence that discuss or refers or that relates to the resale;
 - b) identify each an every individual with knowledge concerning the resale of electricity provided under the August 2002 Agreement and, for each individual identified, state the basis for and describe the state of his or her knowledge;
 - c) state when each and every resale of electricity provided under the August 2002 Agreement occurred;
 - d) identify the purchaser of the electricity on each and every instance when electricity was resold;
 - e) state the amount of electricity that was resold on each instance when a resale occurred; and
 - f) state the amount paid for electricity on each and every occasion when a resale occurred.

Respondents object to this Data Request based on its use of the terms, "resell," "resale," and "resold," which are vague and ambiguous and call for a legal conclusion.

- 1.08 Did PDV Midwest or CITGO "allocate" the costs of electricity provided under the August 2002 Agreement to other entities? If so:
 - a) produce each and every document that discusses or refers or that relates to the allocation of costs, including, but not limited to any bills or invoices relating to such allocation and any all communications (including e-mail communications) or correspondence that discuss or refers or that relates to the allocation;
 - b) identify each an every individual with knowledge concerning the allocation and, for each individual identified, state the basis for and describe the state of his or her knowledge;
 - c) state each and every instance when the costs of electricity provided under the August 2002 Agreement were allocated;
 - d) for each and every instance when these costs were allocated, identify the entity or entities to whom the costs were allocated;
 - e) for each and every instance when these costs were allocated, identify the amount of costs that were allocated; and
 - f) for each and every instance when these costs were allocated, state the amount of electricity that was the subject of the allocation.

Respondents object to this Data Request as overly broad and unduly burdensome, as unreasonably cumulative or duplicative, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents identify the following: Jackie Kannon, Derek Kruk, Ann Lowry, and Glenn Rabinak. Respondents further refer ComEd to their response to Data Request Nos. 1.06. Respondents state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.08 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order. Further responding, Respondents state that information responsive to this request may be derived or ascertained from documents already in ComEd's control or possession or obtainable with equal or greater facility by ComEd and/or from documents that will be produced to ComEd and the burden of deriving or ascertaining the information is substantially the same for ComEd for Respondents.

- 1.09 Concerning the meeting on April 24, 1997, (PDV Midwest's and CITGO's Joint Ver. Ans. at 12, 30):
 - a) identify the individuals that participated in this meeting and identify each individual's employer;
 - b) produce each and every document that discusses or refers or that relates to the meeting, including, but not limited to all notes, summaries, minutes, reports, records, tape recordings (both audio and video), transcriptions, memoranda, communications (including e-mail communications) or items of correspondence that concern, refer or relate to this meeting;
 - c) identify the meeting participant(s) that "provided ComEd with an accurate description of the planned ownership structure of the refinery, needle coking and calciner plants following the planned termination of the Uno-Ven partnership on or about May 1, 1997." (PDV Midwest's and CITGO's Joint Ver. Ans. at 13); and
 - d) state in detail the "accurate description of the planned ownership structure of the refinery, needle coking and calciner plants following the planned termination of the Uno-Ven partnership on or about May 1, 1997" purportedly provided to ComEd.

Respondents object to this Data Request as overly broad and unduly burdensome, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents identify Gary Ephraim and John Walsh, both of whom were employed by Uno-Ven (a 50/50 partnership between PDV America and UnoCal Corporation) on or about the date in question. Respondents further identify John Bassett and Stu Senescu. Respondents state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.09 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order. Respondents state that they will supplement their response, as appropriate, subject to the provisions of an appropriate Confidentiality Agreement or Protective Order

- 1.10 Concerning the meeting of CITGO employees conducted on or about July 30, 1997, (PDV Midwest's and CITGO's Joint Ver. Ans. at 16):
 - a) explain in detail the purpose of this meeting;
 - b) identify the individuals that participated in this meeting and identify each individual's employer;
 - c) produce each and every document that discusses or refers or that relates to the meeting, including, but not limited to all notes, summaries, minutes, reports, records, tape recordings (both audio and video), transcriptions, memoranda, communications (including e-mail communications) or items of correspondence that concern, refer or relate to this meeting; and
 - d) explain in detail the discussions that occurred during this meeting.

Respondents object to this Data Request as overly broad and unduly burdensome, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents identify James Cherwin, Gary Ephraim, James Fillar, Rupa Natarajan, Gustavo Velasquez, and Lois Summerlott. Respondents further refer ComEd to the civil action identified as Needle Coker Co. v. Citgo Petroleum Corp., Case No. 00 L 014496, pending in the Circuit Court of Cook County, Illinois, County Department, Law Division. Respondents state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.10 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order. Respondents state that they will supplement their response, as appropriate, subject to the provisions of an appropriate Confidentiality Agreement or Protective Order.

1.11 PDV Midwest and CITGO state in their Joint Verified Answer filed in this matter that "ComEd knew of Respondents' and Unocal's respective ownership interests in the refinery, needle coking and calciner plants both during, and following the termination of, the Uno-Ven partnership." (PDV Midwest's and CITGO's Joint Ver. Ans. at 30). Concerning this statement:

- a) list each and every fact that supports this statement;
- b) identify the manner in which ComEd was informed of "Respondents' and Unocal's respective ownership interests in the refinery, needle coking and calciner plants both during, and following the termination of, the Uno-Ven partnership;"
- c) identify each and every individual at ComEd who was informed of "Respondents' and Unocal's respective ownership interests in the refinery, needle coking and calciner plants both during, and following the termination of, the Uno-Ven partnership;"
- d) identify each and every individual who informed ComEd of "Respondents' and Unocal's respective ownership interests in the refinery, needle coking and calciner plants both during, and following the termination of, the Uno-Ven partnership;"
- e) identify all persons with knowledge of the facts supporting this allegation, and, for each individual identified, state the basis for and describe the state of his or her knowledge;
- f) produce any and all documents in which ComEd purports to acknowledge that it "knew of Respondents' and Unocal's respective ownership interests in the refinery, needle coking and calciner plants both during, and following the termination of, the Uno-Ven partnership;"
- g) produce any and all documents which purport to inform ComEd of "Respondents' and Unocal's respective ownership interests in the refinery, needle coking and calciner plants both during, and following the termination of, the Uno-Ven partnership;" and
- h) produce any other documents that discuss or refer or that relate to the subject matter of this statement.

Response:

Respondents object to this Data Request as overly broad and unduly burdensome, unreasonably cumulative or duplicative, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine, and on the grounds that it purports to impose obligations beyond those contained in the Rules of Practice of the Illinois Commerce Commission and the Illinois Supreme Court Rules. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents refer ComEd to their response to Data Request No. 1.09. Respondents state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.11 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order. Respondents state

that they will supplement their response, as appropriate, subject to the provisions of an appropriate Confidentiality Agreement or Protective order.

- 1.12 Regarding PDV Midwest's and CITGO's statement that they "allocated a portion of the cost under the Rate CS Contract to Needle Coker and Chicago Carbon based on Rate 6L, and that Needle Coker and Chicago Carbon were notified of such allocations via documents that simulated the Rate 6L calculation," (PDV Midwest's and CITGO's Joint Ver. Ans. at 15):
 - a) describe what is meant by "allocated" used in this statement;
 - b) describe the terms or methodology PDV Midwest or CITGO used to purportedly "allocate" the cost of electricity under the Rate CS Contract between and among PDV Midwest, Needle Coker and Chicago Carbon:
 - c) identify each and every provision of the Rate CS Contract that permitted PDV Midwest or CITGO to "allocate[] a portion of the costs under the Rate CS Contract to Needle Coker and Chicago Carbon based on Rate 6L...."; and
 - d) produce any and all documents that, discuss, refer or that relate to any notification to ComEd that PDV Midwest and CITGO "allocated a portion of the cost under the Rate CS Contract to Needle Coker and Chicago Carbon based on Rate 6L...."

Respondents object to this Data Request as overly broad and unduly burdensome, unreasonably cumulative or duplicative, to the extent it seeks information that is already in ComEd's control or possession or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Respondents object to this Data Request to the extent it seeks a legal conclusion and state that the Rate CS Contract speaks for itself. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.12 subject to the provisions of an appropriate Confidentiality Agreement or Protective Order. Responding further, Respondents state that information responsive to this request may be derived or ascertained from documents already in ComEd's control or possession or obtainable with equal or greater facility by ComEd and/or from documents that will be produced to ComEd and the burden of deriving or ascertaining the information is substantially the same for ComEd for Respondents.

- 1.13 For the period beginning January 1, 1989 to the present, for PDV Midwest, Needle Coker and Chicago Carbon, specifically identify and describe:
 - a) the type of business organization;
 - b) the entities having an interest in each;
 - c) the type of ownership interest in each; and
 - d) percentage ownership interest in each.

Respondents object to this Data Request as overly broad and unduly burdensome, to the extent it seeks information that is already in ComEd's control or possession (*see*, *e.g.*, Respondents' Joint Ver.Ans.) or is obtainable with equal or greater facility by ComEd, and to the extent it seeks information protected from disclosure by any privilege including, without limitation, the attorney-client privilege and the work product doctrine. Respondents lack sufficient information to respond to this request as it applies to Chicago Carbon. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents state that they will supplement their response, as appropriate, subject to the provisions of an appropriate Confidentiality Agreement or Protective Order.

1.14 Produce any and all documents Respondents intend to rely upon at hearing in this matter.

Response:

Respondents object to this Data Request on the grounds that it purports to impose obligations beyond those contained in the Rules of Practice of the Illinois Commerce Commission and the Illinois Supreme Court Rules. Respondents further object to this Data Request as untimely. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents state that they will produce non-privileged documents within their possession or control that are responsive to Data Request No. 1.14, if any, in due course, subject to the provisions of an appropriate Confidentiality Agreement or Protective Order and any schedule established by the Administrative Law Judge.

- 1.15 Identify all witnesses Respondents intend to present at hearing in this matter. For each expert or opinion witness, provide a current copy of each witness' *curriculum vitae* and state:
 - a) the subject matter on which the opinion witness is expected to testify;
 - b) the conclusions and opinions of the opinion witness and the basis therefore; and
 - c) the qualifications of the opinion witness.

Respondents object to this Data Request on the grounds that it purports to impose obligations beyond those contained in the Rules of Practice of the Illinois Commerce Commission and the Illinois Supreme Court Rules. Respondents further object to this Data Request as untimely. Subject to the foregoing objections and the General Objections, and without waiver thereof, Respondents state that they will provide the provide the requested information, as appropriate, in due course, consistent with any schedule established by the Administrative Law Judge.

Dated: December 9, 2002.

Respectfully submitted,

PDV MIDWEST REFINING, L.L.C. and CITGO PETROLEUM CORPORATION

By: _____

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One of their attorneys

CERTIFICATE OF SERVICE

I, Thomas A. Andreoli, hereby certify that I served a copy of the Responses and Objections of PDV Midwest Refining, LLC and Citgo Petroleum Corporation to Commonwealth Edison Company's First Set of Data Requests upon the service list in Docket No. 02-0277 by email on December 9, 2002.

Thomas A. Andreoli